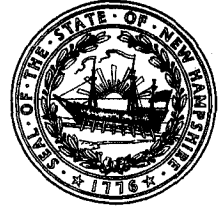




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Lori Champagne
P.O. Box 3721
Nashua, NH 03061

Re: 328 Cram Road, Lyndeborough Tax Map 5 –
Lot 37 – Wetlands Bureau File 2004-1387

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 06-007**

February 16, 2006

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Lori Champagne, pursuant to RSA 482-A and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling \$10,000 be imposed against Lori Champagne for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("the Division"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Lori Champagne is an individual having a mailing address of Post Office Box 3721, Nashua, NH 03061.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted New Hampshire Administrative Rule Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Lori Champagne is the owner of property located at 328 Cram Road in Lyndeborough, New Hampshire, more particularly described as Lot 37 on Tax Map 5 (the "Property").
4. On April 9, 2004, Division personnel from the Division's Dam Safety Bureau conducted an inspection of the Property and observed that a dam had been constructed on the Property without a permit from DES. Division inspectors noted in their report that the existing dam did not meet

current state standards for dam construction; and that if Ms. Champagne decided to retain the dam, a standard dredge and fill permit would also be required by the Division's Wetlands Bureau for impacts to the wetlands on the Property.

5. A letter dated April 20, 2004 from the Dam Safety Bureau requested that Ms. Champagne reply to the Division in writing within 30 days of receipt of the letter.

6. On May 4, 2004, Division personnel received a telephone call from Ms. Champagne during which she stated that she would like to remove the dam. DES personnel informed her that she would need to coordinate the dam removal with the DES Wetlands Bureau and the DES Dam Bureau as stated in the letter dated April 20, 2004.

7. On June 21, 2004, Division personnel conducted another inspection of the Property and observed the following:

- a. A dam, measuring approximately 131 feet long x 7 feet high, with a 20 foot long culvert bypass pipe, filled approximately 2,620 square feet of jurisdictional wetlands;
- b. The impoundment created by the dam covered approximately 50,000 square feet, intercepting a perennial stream, altered a forested wetland and was potentially impacting seasonal drainage;
- c. A defined drainage existed prior to the construction of the impoundment, as evidenced by the existing vegetation above and below the impoundment;
- d. An access road had been constructed on the back of the impoundment, measuring approximately 150 feet long by 50 feet wide, filling approximately 7,500 square feet of jurisdictional wetlands;
- e. Approximately 265 linear feet of a perennial stream had been altered by construction of an impoundment;
- f. Stumps, logging debris and boulders were placed in jurisdictional wetland along the back of the access road, which created a fill area of approximately 2,500 square feet;
- g. No erosion controls were in place to stabilize the exposed soils adjacent to the impoundment.

8. On November 17, 2004, the Division issued Administrative Order No. WD 04-023 (the "Order") pursuant to RSA 482-A:6 to Lori Champagne. The Order required Mrs. Champagne to:

- a. Immediately retain a certified wetland scientist to supervise the restoration plans required by the Order;
- b. Within 90 days of the Order, submit a dam removal plan; and
- c. Within 90 days of the Order, submit a wetlands restoration plan.

9. On November 10, 2005, Division personnel conducted a site inspection and determined that the dam and wetland fill had not been removed.
10. On December 15, 2005, the DES Legal Unit issued a reminder letter to Lori Champagne indicating that the deadlines in the Order were well past due.
11. On December 22, 2005, the DES Legal Unit received correspondence from Richard Cote, P.E. Comprehensive Environmental Inc., which stated that Lori Champagne had retained the firm to act as her agent.
12. To date, the Division has not received the requested dam removal plan and restoration plan from Ms. Champagne for impacts to wetlands on the Property.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Lori Champagne has violated RSA 482-A:3, I, by constructing a dam within a perennial stream impacting approximately 265 linear feet of a perennial stream without a permit from DES. For this violation, Env-C 614.05(c)(2) specifies a fine of \$2,000.
2. Lori Champagne has violated RSA 482-A:3, I, by filling approximately 2,620 square feet of wetland to construct a dam without a permit from DES. For this violation, Env-C 614.02(b)(1) specifies a fine of \$500.
3. Lori Champagne has violated RSA 482-A:3, I, by filling approximately 7,500 square feet of wetland to construct an access road without a permit from DES. For this violation, Env-C 614.03(b)(1) specifies a fine of \$1,000.
4. Lori Champagne has violated RSA 482-A:3, I, by filling approximately 2,500 square feet of wetland with logging debris without a permit from DES. For this violation, Env-C 614.02(b)(1) specifies a fine of \$500.
5. Lori Champagne has violated the Order by:
 - a. Failing to immediately obtain a certified wetland scientist;
 - b. Failing to submit a dam removal plan within 90 days of the Order; and
 - c. Failing to submit a wetland restoration plan within 90 days of the Order.

For these violations, Env-C 614.06(e) specifies a fine of \$2,000 per violation of an order, or \$6,000 for these violations of Administrative Order No. WD 04-023 issued by DES pursuant to RSA 482-A:6 on November 17, 2004.

The total fine being sought is \$10,000.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Lori Champagne is required to respond to this notice. Please respond no later than March 21, 2006 using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If you wish to discuss the possibility of settling the case, please sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

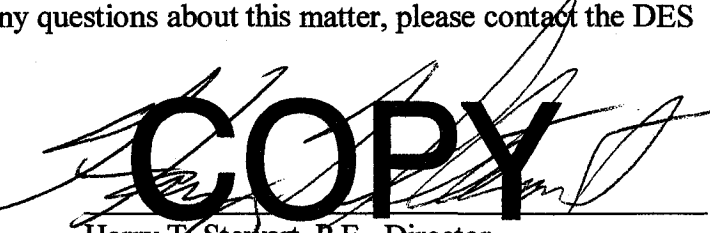
* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** that you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.


COPY
Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Dawn Buker, DES Wetlands Bureau
cc: Gretchen Hamel, Legal Unit Administrator
Town of Lyndeborough Board of Selectmen and Conservation Commission

***** RETURN THIS PAGE ONLY *****

**LORI CHAMPAGNE IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN March 21, 2006

Please check the appropriate line and fill in the requested information below:

APPEARANCE On behalf of Lori Champagne

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Lori Champagne

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$10,000 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

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2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.